

08/23/2017

JULIA C. DUDLEY, CLERK
BY: *J. Jones*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

No. 3:17-cv-00061

SOUTHERN ENVIRONMENTAL LAW
CENTER,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

COMPLAINT

INTRODUCTION

1. This Freedom of Information Act (“FOIA”) suit challenges Defendant Environmental Protection Agency’s (“EPA”) unlawful and unreasonable delay in responding to a request for information about the agency’s implementation of a far-reaching executive order that could dismantle federal environmental protections in the name of “regulatory reform.” This directive could have profound impacts on the work of EPA and its mission to protect human health and the environment.

2. Plaintiff Southern Environmental Law Center (“SELC”), a nonprofit public interest organization dedicated to protecting the environment of the Southeast, requested information relating to Executive Order 13777 from EPA in April 2017. In the months since then SELC has worked with the agency to clarify its request so it can obtain important information relevant to its organizational mission. EPA, in turn, has thrown up bureaucratic roadblocks to providing the requested information and has failed to meet its own extended deadline for response.

3. When EPA missed the statutory deadline for responding to SELC's request, SELC filed an administrative appeal with the agency, even though FOIA does not require this step. More than 20 working days have passed since SELC filed this appeal, and EPA has not provided any information or otherwise made further determinations on SELC's request.

4. EPA has violated FOIA by failing to "promptly" provide requested information and make a determination within 20 working days of receiving a request. 5 U.S.C. §§ 552(a)(3)(A); (a)(6)(A). SELC seeks a declaration that EPA has violated FOIA and an order requiring EPA to provide all nonexempt, responsive documents without further delay.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552, 28 U.S.C. § 1331, and 28 U.S.C. § 2201.

6. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SELC is "deemed to have exhausted administrative remedies" because EPA has "fail[ed] to comply with the applicable time limit provisions." Nonetheless, SELC did file an administrative appeal of EPA's untimely response and EPA has taken no action on that appeal in more than 20 working days.

7. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B). SELC is a 501(c)(3) nonprofit organization headquartered and residing in Charlottesville, Virginia, in the Western District of Virginia.

PARTIES

Plaintiffs

8. Plaintiff Southern Environmental Law Center, Inc. ("SELC") is a 501(c)(3), nonprofit public interest environmental law firm with a focus on six southeastern states.

9. SELC is a "person" for purposes of FOIA, 5 U.S.C. § 551(2).

10. SELC uses public advocacy and the law to protect the people and the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about activities affecting human health and the environment in the Southeast. SELC disseminates public information it gathers to the general public through its website, *southernenvironment.org*, which is updated regularly, as well as press releases, social media, and public comment letters. SELC attorneys also regularly attend and speak at public meetings and hearings throughout the region, informed by and sharing their analysis of public information. SELC has been actively engaged in protecting the environment of the Southeast at the federal, state, and local levels for three decades.

Defendants

11. The U.S. Environmental Protection Agency is an “agency” for purposes of FOIA. 5 U.S.C. § 551(1). EPA has possession or control of the requested information.

FACTS

Executive Order 13777

12. On February 24, 2017, President Trump signed Executive Order 13777, Enforcing the Regulatory Reform Agenda (“the Order”). The Order requires that federal agencies create a regulatory reform task force and procedures for identifying supposedly “unnecessary” or otherwise burdensome regulations.

13. Pursuant to the Order, agencies including EPA must “evaluate existing regulations . . . and make recommendations to the agency head regarding their repeal, replacement, or modification.” Each agency’s regulatory reform task force must regularly report to agency heads on their progress.

14. The Executive Order works hand-in-hand with Executive Order 13771, issued on

January 24, 2017, which requires the rescission of two existing regulations for every new one. When a regulatory reform task force at EPA and other agencies identifies a regulation as supposedly “unnecessary,” the agency head must prioritize it for elimination.

15. Since EPA Administrator Scott Pruitt was confirmed, the agency has already attempted to delay or reverse key environmental protections. For example, EPA is reconsidering and delaying decades-overdue revisions to effluent limitation guidelines for steam electric power plants, which limit toxic wastewater pollution from coal-fired power plants. EPA, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 80 Fed. Reg. 67837 (Nov. 3, 2015); EPA, Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 82 Fed. Reg. 26017 (June 6, 2017). The fate of this rule will significantly impact the Southeast, where waste from burning coal is often stored in unlined pits that discharge into rivers.

16. Along with Executive Order 13771, the Order threatens to undermine environmental protections for the Southeast and elsewhere in the name of cost-cutting and “regulatory reform.” The Order requires rapid agency action, including the designation of an agency “regulatory reform officer” within 60 days and an initial task force report to the agency head within 90 days. In the time between SELC’s request and this complaint, EPA has already taken actions to begin implementing the Order, inviting suggestions to reverse any EPA regulation on the books. *See* EPA, Evaluation of Existing Regulations, 82 Fed. Reg. 17793 (Apr. 13, 2017).

17. Members of Congress have expressed alarm about agencies’ lack of transparency in carrying out the Order, citing EPA’s conduct in particular. Exhibit 1, Letter from Rep. Elijah

Cummings *et al.* to Nick Mulvaney, Office of Mgmt. & Budget, & Neomi Rao, Office of Info. & Regulatory Affairs (Aug. 7, 2017). The cited letter stated that “it is unacceptable for federal agencies to operate in such a clandestine and unaccountable manner especially when the result could be the undoing of critical public health and safety protections.” *Id.* at 3.

18. EPA’s protections for air, water, and public health are critical to SELC’s mission. To advocate for the people and natural resources of the Southeast, SELC requires prompt and full information on EPA actions to weaken or undo these protections.

19. SELC works with partners across the country to share information on, analyze, and respond to federal environmental policy changes. For example, SELC has been closely engaged in developments on the National Environmental Policy Act, climate change, and the Clean Water Rule. In addition to its offices across the Southeast, SELC maintains an office in Washington, D.C., to advance its work on federal legislative and regulatory policy.

20. SELC has submitted or joined multiple public comment letters to EPA urging it to maintain or strengthen environmental protections instead of eliminating them in carrying out the regulatory reform orders. *E.g.*, Exhibit 2, Comments on behalf of Southern Environmental Law Center, One Hundred Miles, the Coastal Conservation League, & Upstate Forever, Docket ID No. EPA-GQ-OA-2017-0190 (May 15, 2017).

21. EPA obstruction and delay in disclosing how it is putting this Executive Order into practice harms SELC’s work. Without full and timely information on this ongoing process, SELC and its partners cannot effectively participate in regulatory reform decisionmaking and advocate for essential environmental protections; nor can SELC share information with the public to facilitate involvement by interested citizens.

22. An order compelling EPA to produce nonexempt, responsive documents will

redress harm to SELC by providing access to information that is relevant and useful to its advocacy and information-sharing on federal environmental policy.

SELC's FOIA Request

23. On April 12, 2017, SELC submitted FOIA request EPA-HQ-2017-006074, seeking any and all records in the possession of EPA relating to the Order and its execution or implementation. A copy of this FOIA request is attached as Exhibit 3.

24. This request was a revision and resubmittal of FOIA request EPA-HQ-2017-005657, submitted April 3, 2017, with additional information to support SELC's request for a fee waiver.

25. SELC attorney Kym Hunter spoke with Larry Auther of the Office of Policy by telephone regarding this request on April 19, 2017. Mr. Auther advised Ms. Hunter that all information responsive to this request was either available online or covered by FOIA Exemption 5. Ms. Hunter requested that Mr. Auther put that response in writing, but he refused to do so.

26. On April 20, Mr. Auther gave SELC a different response: he told SELC by email that "EPA cannot process your request because the subject matter is too broad, it is phrased as legal discovery, and you have not identified any record custodians." Exhibit 4, Email from Larry Auther, EPA, to Kym Hunter, SELC (April 20, 2017). This email asked SELC to clarify or modify the request and stated that EPA would consider the request withdrawn if they received no response by May 1, 2017. *Id.*

27. SELC immediately responded and repeatedly discussed this request via email and telephone conversations with EPA. In April 20 and May 9 emails to EPA, SELC clarified that the time frame for the request was February 24, 2017, to the date of the request, April 12, 2017.

Exhibit 5, Email from Kym Hunter to Larry Auther (April 20, 2017); Exhibit 6, Email from Kym Hunter to Nicole Rementer, EPA (May 9, 2017).

28. Ms. Hunter discussed the request by phone with Nicole Rementer on May 24. SELC did not concede its original request was too broad, but the parties agreed on the records systems, custodians, search terms, and date range EPA would initially use to fulfill the request.

29. In a May 24, 2017, email documenting that phone conversation, Ms. Rementer informed SELC that EPA would “start the clock” on the request. Exhibit 7, Email from Nicole Rementer to Kym Hunter (May 24, 2017).

30. On May 30, 2017, EPA extended its own deadline for responding until July 7, 2017, citing as “unusual circumstances” the scope of the request and the time required to respond. Exhibit 8, Email from Larry Auther to Kym Hunter (May 30, 2017) (citing 40 C.F.R. § 2.104(d)).

31. Since then EPA has not sought any additional extensions of time or modifications of the request.

32. Nearly four months have passed since SELC first submitted its FOIA request. One month has passed since EPA’s extended deadline for responding to this FOIA request.

33. To date EPA has not made any determination regarding this request or provided any responsive documents.

Administrative Appeal

34. EPA’s extended deadline for responding to SELC’s FOIA request came and went on July 7.

35. On July 11, SELC filed an administrative appeal of EPA’s illegal failure to respond to its request within the time FOIA requires. Exhibit 9.

36. SELC stated in its appeal that “[i]f we do not receive a response to this appeal within 20 working days we will seek judicial review of EPA’s failure to respond in a timely manner.”

37. EPA acknowledged SELC’s appeal on July 12, 2017.

38. More than 20 working days have passed since SELC filed its appeal, and EPA has not responded except to acknowledge the appeal.

LEGAL BACKGROUND

39. The Freedom of Information Act, 5 U.S.C. § 552, reflects “a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360–61 (1976) (quoting legislative history) (internal quotation marks omitted). FOIA “shines a light on government operations ‘to check against corruption and to hold the governors accountable to the governed.’” *Coleman v. DEA*, 714 F.3d 816, 818–19 (4th Cir. 2013) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).

40. “[T]he time provisions of the Act are central to its purpose.” *Hayden v. U.S. Dep’t of Justice*, 413 F. Supp. 1285, 1288 (D.D.C. 1976). FOIA requires federal agencies to “promptly” make records available upon request. 5 U.S.C. § 552(a)(3)(A). Agencies must “determine . . . whether to comply” with a request within 20 working days of receiving the request, and they must immediately notify the requester of that determination. *Id.* § 552(a)(6)(A).

41. To make a “determination” under FOIA, “the agency must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for*

Responsibility & Ethics in Washington v. Fed. Election Comm’n, 711 F.3d 180, 186 (D.C. Cir. 2013).

42. Agencies may extend their deadline for responding by up to 10 working days if unusual circumstances apply and they provide timely notice to the requester. *Id.* § 552(a)(6)(B).

43. Under EPA regulations and FOIA, if the agency seeks to extend a deadline further than 10 working days, it must work with the requester to modify the request so it can be fulfilled within the 10 working day extension or arrange an alternative time period. 40 C.F.R. § 2.104(d); 5 U.S.C. § 552(a)(6)(B)(ii).

CLAIM FOR RELIEF

Count 1

44. SELC incorporates by reference paragraphs 1 through 40 of this Complaint as if fully stated herein.

45. Unless “unusual” or “exceptional circumstances” apply, EPA must make a determination in response to a FOIA request within 20 working days. § 552(a)(6)(A).

46. Pursuant to the “unusual circumstances” exception EPA invoked, and EPA’s correspondence with SELC, EPA was required to respond with a determination by July 7, 2017.

47. EPA did not respond to SELC’s FOIA request by July 7, 2017, and has not responded since.

48. EPA’s failure to make a determination within the time prescribed is a violation of the Freedom of Information Act.

Count 2

49. SELC incorporates by reference paragraphs 1 through 45 of this Complaint as if fully stated herein.

50. EPA must make a determination with respect to an administrative appeal within 20 working days after receiving the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

51. SELC filed its administrative appeal on July 11, 2017. EPA was required to respond by August 8, 2017.

52. EPA did not make a determination on SELC's appeal by August 8, 2017.

53. EPA's failure to make a determination on the appeal within the time prescribed is a violation of the Freedom of Information Act

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (i) Declare that EPA has violated and is continuing to violate FOIA by failing to timely respond to SELC's request;
- (ii) Direct EPA to provide all nonexempt, responsive documents to SELC without further delay;
- (iii) Retain jurisdiction over this matter to rule on any assertions by EPA that certain responsive documents are exempt from disclosure;
- (iv) Order EPA to produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event that EPA determines that certain responsive records are exempt from disclosure;
- (v) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- (vi) Grant any other relief the Court deems just and proper.

Respectfully submitted, this 23rd day of August, 2017.

/s/ Greg Buppert
Greg Buppert – VA Bar No. 86676

/s/ Kimberley Hunter
Kimberley Hunter – NC Bar No. 41333 (*pro hac vice*
pending)

/s/ Leslie Griffith
Leslie Griffith – NC Bar No. 50122 (*pro hac vice*
pending)

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Southern Environmental Law Center

(b) County of Residence of First Listed Plaintiff Charlottesville, VA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Greg Buppert

Southern Environmental Law Center; 201 West Main Street, Suite 14
Charlottesville, VA 22902; (434) 977-4090**DEFENDANTS**

U.S. Environmental Protection Agency

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FOIA, 5 U.S.C. 552.

Brief description of cause:

(1) Violation of the Freedom of Information Act.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/23/2017

SIGNATURE OF ATTORNEY OF RECORD

Greg Buppert

FOR OFFICE USE ONLY

RECEIPT # 0423

Case 3:17-cv-00061-GEC Document 1-1 Filed 08/23/17 Page 1 of 2 Pageid#: 12

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1

Congress of the United States
Washington, DC 20515

August 7, 2017

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

The Honorable Neomi Rao
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Mulvaney and Administrator Rao:

We write to express our alarm concerning the lack of transparency, accountability, and independence of the Regulatory Reform Task Forces. These Task Forces were established by President Trump through Executive Order 13777 for the purpose of recommending agency rules to be repealed.¹ We believe that the interests of the American public must be paramount when reviewing the worthiness of regulations. Therefore, these Task Forces must have an effective and transparent guard against conflicts of interest, especially those in which industry lobbyists seek to overturn environmental and health protections for financial gain. It appears that the current Task Forces are already failing on this front, and instead are actively hiding their members and their meetings from public view.

According to a joint investigation by the *New York Times* and *ProPublica*, these Task Forces have been “conducted in large part out of public view and often by political appointees with deep industry ties and potential conflicts.”² Some agencies have reportedly refused to release basic information about these deregulatory Task Forces, such as the names of the people appointed to serve on them.³

Nearly a third of identifiable employees serving on Regulatory Reform Task Forces also have material conflicts of interest, according to the joint investigation. These employees include “lawyers who have represented businesses in cases against government regulators, staff members of political dark money groups, employees of industry-funded organizations opposed to

¹ 82 C.F.R. § 12285 (2017) (online at www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda).

² Danielle Ivory & Robert Faturechi, *The Deep Industry Ties of Trump’s Deregulation Teams*, *New York Times* (July 11, 2017) (online at www.nytimes.com/2017/07/11/business/the-deep-industry-ties-of-trumps-deregulation-teams.html).

³ *Id.*

environmental rules and at least three people who were registered to lobby the agencies they now work for.”⁴

Even worse, several employees may stand to profit from their activity on a Task Force.⁵ Some agencies, such as the Environmental Protection Agency (EPA), have refused to disclose whether Task Force members are working on matters related to their former employers or whether they own stock in companies affected by the work of the Task Force upon which they serve.⁶ This includes “some hires who may be reviewing rules their previous employers tried to weaken or kill, and others who may personally profit if certain regulations are changed.”⁷ For example, the wife of one Task Force member at the EPA is a top lobbyist for a large oil company.⁸ Another Task Force member at the Department of Housing and Urban Development (HUD) owns stock in a real estate investment marketplace while simultaneously charged with reviewing rules that will affect real estate investors.⁹ Rather than “drain the swamp,” these conflicts threaten to influence the outcome of the review process against hardworking Americans and in favor of regulated industries and agency staff.

We are also concerned with the secrecy of meetings held by these Task Forces, which has largely occurred behind closed doors without public input. In some cases, meetings with regulated entities, lobbyists, or trade associations are only identifiable through handwritten sign-in sheets. For example, a review of over 1,300 pages of sign-in sheets involving one agency alone revealed that “at least 58 representatives of the oil and gas industry” met with the agency’s deregulatory Task Force in just four months.¹⁰ There does not appear to be a record of the meeting notes, the matters discussed, or subsequent actions taken by government employees serving on these Task Forces. It is also unclear whether every Executive Branch agency even maintains a record of these meetings as required by the Federal Records Act.¹¹

Withholding the names and titles of Task Force participants may also violate the Freedom of Information Act (FOIA).¹² The Department of Justice’s FOIA Guide explicitly

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Danielle Ivory, Robert Faturechi, & Karl Russell, *The Business Links of Those Leading Trump’s Rollbacks*, New York Times (July 11, 2017) (www.nytimes.com/interactive/2017/07/11/business/conflicts-trump-regulation-rollback-team.html).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 44 U.S.C. 3101.

¹² 5 U.S.C. § 552 (2017).

states that “[c]ivilian federal employees who are not involved in law enforcement or sensitive occupations generally have no expectation of privacy regarding their names, titles, grades, salaries, and duty stations as employees.”¹³

These task forces are eerily reminiscent of the secretive energy task force run by former Vice President Cheney. Simply put, it is unacceptable for federal agencies to operate in such a clandestine and unaccountable manner especially when the result could be the undoing of critical public health and safety protections. The implementation of Executive Order 13777 must be “consistent with applicable law.”¹⁴ Accordingly, we request that you provide the following documents and information no later than August 7, 2017:

1. A description of every Task Force created pursuant E.O. 13777, the agency hosting the Task Force, and other agencies participating in the Task Force.
2. A list of the names, titles, and organizations of every member of each Task Force established by E.O. 13777.
3. All documents and communications related to waivers issued under E.O. 13770 for any member of a Task Force created under E.O. 13777, including a copy of any waiver issued.
4. For each Task Force created under E.O. 13777, a list of all members who have recused themselves from any matters related to their prior employer or any matter related to their prior employment and a description of the reason for such recusal.
5. For each Task Force created under E.O. 13777, a list of all Task Force members for whom written certifications were made under section 208(b) of title 18, United States Code, a copy of each such certification, a summary description of the conflict necessitating the certification, and the reason for granting the certification.
6. All documents and communications related to participation in Task Force meetings by non-governmental entities including comments and advocacy materials.
7. Please describe any requirements ensuring that Task Forces obtain balanced input and are not unduly influenced by special interests.

¹³ Department of Justice, Guide to the Freedom of Information Act (2013) (online at www.justice.gov/oip/doj-guide-freedom-information-act-0).

¹⁴ 82 C.F.R. § 12285 (2017) (online at www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda).

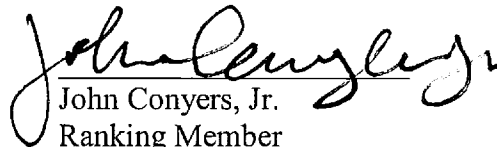
8. Please describe what, if any, measures agencies are taking to provide transparency for the regulatory review process under E.O. 13777.
9. Please explain why some agencies have refused to disclose the names of Task Force members in response to FOIA requests.

Thank you for your prompt attention to our request.

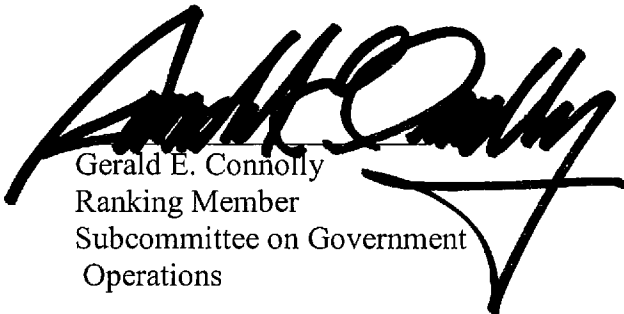
Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



John Conyers, Jr.
Ranking Member
Committee on the Judiciary



Gerald E. Connolly
Ranking Member
Subcommittee on Government
Operations



David Cicilline
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law

- cc: The Honorable Trey Gowdy, Chairman
Committee on Oversight and Government Reform
- cc: The Honorable Bob Goodlatte, Chairman
Committee on the Judiciary
- cc: The Honorable Tom Marino, Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
- cc: The Honorable Mark Meadows, Chairman
Subcommittee on Government Operations

EXHIBIT 2

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

May 15, 2017

Submitted via www.regulations.gov
U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OA-2017-0190
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Regulatory Reform (Docket ID No. EPA-HQ-OA-2017-0190)

Dear Administrator Pruitt:

Southern Environmental Law Center (SELC), submits the following comments regarding the Environmental Protection Agency's (EPA) recent request for input "on regulations that may be appropriate for repeal, replacement, or modification," in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."¹ These comments are submitted on behalf of the Southern Environmental Law Center, One Hundred Miles, the Coastal Conservation League, Upstate Forever.

SELC is a regional non-profit organization, working in six states in the Southeast to champion the special resources of the South: clean water, healthy air, mountains, forests, rural countryside, and the coast. One Hundred Miles is a non-profit organization dedicated to protecting, preserving, and enhancing Georgia's coast. The Coastal Conservation League and Upstate Forever are non-profit organizations committed to protecting the unique landscapes and communities that define South Carolina's low country and upstate, respectively. Citizens of our states have deep connections to the land and a strong interest in EPA's evaluation of existing regulations and support the regulatory process EPA engages in to fulfill their mission to protect the health and environment of the United States.

On February 24, 2017, President Trump issued Executive Order 13777, which established a federal policy "to alleviate unnecessary regulatory burdens" on the American people. Among other things, this executive order requires the Environmental Protection Agency (EPA) to identify regulations that could be repealed, replaced, or modified. The public process in which EPA is now engaged flows from a memo from EPA Administrator Pruitt to senior EPA leadership and Regional Administrators issued on March 24, 2017.² As described below, it is essential for the health of our communities and economies that EPA build on existing water quality protections and specifically maintain protections provided by the Clean Water Rule, Steam Electric ELG, and the Chesapeake Bay TMDL.

¹ See U.S. EPA, Evaluation of Existing Regulations, 82 Fed. Reg. 17,793 (Apr. 13, 2017) (Docket ID No. EPA-HQ-OA-2017-0190).

² See Memorandum from Scott Pruitt, Administrator, U.S. EPA, to select EPA staff (Mar. 24, 2017), *available at* https://www.epa.gov/sites/production/files/2017-04/documents/regulatory_reform_agenda.pdf.

Protecting Water Quality is Essential for a Healthy Economy

Our southern rivers, streams, lakes, estuaries, and oceans are foundational to our region's history, culture, and economy. Each year, tourists from across the country vacation on southern beaches. Recreational fishermen catch trout in our mountain streams, bass in our piedmont lakes and streams, and any number of saltwater fish in our extensive estuaries or from our beaches. Commercial fishermen fish our estuaries and ocean waters, landing more than \$380 million worth of catch in 2015 according to the National Marine Fisheries Service.³ Our populations are growing as people move to our expanding cities and our developing retirement communities. Each of these parts of the southern economy depends on clean water.

The recreational industry in the Southeast benefits when small streams and wetlands, which are integral for fish and wildlife habitat, are protected. In 2011, in the six states SELC works – Virginia, North Carolina, South Carolina, Georgia, Alabama, and Tennessee – the U.S. Fish and Wildlife Service reported that a total of \$19 billion was spent on wildlife recreation, including \$5.7 billion on fishing, and more than 15.9 million people participated in these recreation activities throughout the six-state region.⁴

There can be no doubt that the Clean Water Act is essential to a healthy economy. For example, the Ecological Economics Journal estimates the Clean Water Act has been responsible for adding as much as \$15.8 billion in economic benefits for the State of Virginia.⁵ A host of industries rely on access to clean water, including tourism which employs 350,000 Virginians and generates \$18 billion for the economy.

Clean water is important to the nation's economy as well. For example, the Outdoor Industry Association reported that on an annual basis, the fishing economy directly generates \$35,775,827,140 in retail spending, 287,554 jobs, \$10,395,326,785 in salaries and wages, \$2,540,632,232 in federal taxes and \$2,360,293,823 in state and local taxes.⁶ Additionally, water sports generate \$139,971,810,172 in retail spending; 1,234,876 jobs; \$43,893,049,709 in salaries and wages; \$10,618,742,884 in federal taxes; and \$9,601,531,150 in state and local taxes.⁷

Failing to Adequately Control Pollution Burdens Downstream Communities

Experience with lax environmental protections has proven false the notion that safeguards for public health and the environment are a burden. We have repeatedly seen how inadequate or poorly enforced protections cause great harm downstream.

³ See https://www.st.nmfs.noaa.gov/st1/commercial/landings/annual_landings.html.

⁴ See U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation *available at* <https://www.census.gov/prod/2012pubs/fhw11-nat.pdf>.

⁵ Jim Epstein, Clean Water is Vital for Success of Virginia, *The Daily Progress* (Nov. 23, 2014), *available at* http://www.dailyprogress.com/opinion/opinion-column-clean-water-is-vital-for-success-of-virginia/article_54a3fad0-71c6-11e4-ab71-23593a302e82.html.

⁶ See Outdoor Industry Association, *The Outdoor Recreation Economy* (2013), *available at* https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

⁷ See Outdoor Industry Association, *The Outdoor Recreation Economy* (2013), *available at* https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

The cost of inadequate protections can be substantial. The Chesapeake Bay is one example of the expense of failing to maintain adequate protections. After decades of pollution that puts this \$1 trillion economic resource and drinking water supply for 13 million people at risk, significant state, local, and federal efforts have resulted in a blueprint for a healthy bay. But those efforts have come at a tremendous cost that could have been reduced through practical, effective protections that prevented pollution that plagues the Bay.

In North Carolina, the drinking water supply for more than 300,000 Raleigh-area residents is threatened by nutrient pollution that results in dangerous algae blooms. Cleaning up the pollution—a legacy of unchecked development upstream—will require significant investments in retrofits and water quality improvement measures in upstream communities. Just last year, the State of North Carolina ended a \$3,000,000 contract for a project designed to stir the water in the lake in an effort to prevent harmful algal growth.⁸ That fool's errand wasted valuable tax dollars that would be better spent preventing pollution from threatening our drinking water in the first place. Failing to implement adequate water quality protections decades ago has created a greater need for increased, and more expensive, protections now.

To be sure, an absence of meaningful protections harms people downstream. In Georgia, a company's failure to comply with water quality protections in 2011 resulted in the largest fish kill in state history. An estimated 38,000 fish died, prompting lawsuits from the county government⁹ and landowners¹⁰ to recoup damages caused by the pollution.

These are only a few significant examples. Others happen on a much smaller scale, but in thousands of cases across the country. Many drinking water providers understand the plight of the Des Moines Water Works, which sued upstream drainage districts in an effort to recoup millions of dollars of additional expense related to removing nutrients from its drinking water supply.¹¹ There, the expense was essential—it removed pollution associated with blue baby syndrome, a condition that can be fatal to infants. Drinking water providers across the country face similar burdens of ensuring that the water supply upstream is clean enough to serve their communities.

Failing to implement protective water quality protections also threatens to increase the economic burden on downstream users at a time when millions of Americans are at risk of losing access to affordable drinking water. A recent study by researchers at Michigan State University projects that if water rates rise at the expected rate over the next five years, 35.6% of U.S. households could have water bills that are unaffordable.¹² As such, utilities will struggle to fund

⁸ Jim Specht, NCDEQ says it will remove SolarBees from Jordan Lake, *News and Observer* (May 5, 2016), available at <http://www.newsobserver.com/news/local/counties/wake-county/article75901662.html>.

⁹ AP, Effingham reaches fish kill settlement, *Georgia Public Broadcasting* (Oct. 24, 2013), available at <http://www.gpb.org/news/2013/10/24/effingham-reaches-fish-kill-settlement>.

¹⁰ AP, King America settles with landowners, *Georgia Public Broadcasting* (Aug. 9, 2013), available at <http://www.gpb.org/news/2013/08/09/king-america-settles-with-landowners>.

¹¹ Donnelle Eller, With Water Works' lawsuit dismissed, water quality is the legislature's problem, *The Des Moines Register* (Mar. 17, 2017), available at <http://www.desmoinesregister.com/story/money/agriculture/2017/03/17/judge-dismisses-water-works-nitrates-lawsuit/99327928/>.

¹² Mack EA, Wrase S (2017) Correction: A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States. *PLOS ONE* 12(4): e0176645, at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0169488>.

routine maintenance, much less improved treatment capacity. Therefore, we encourage EPA to build upon existing protections and to extend those protections where needed to reduce the regulatory and economic burden on downstream water users.

Regulations developed in a public, transparent manner protect public health, conserve resources and spur innovation, while at the same time allowing for economic growth and providing benefits that exceed their costs. EPA should ensure a public process that is transparent and allows for adequate public notice and comment – if it truly wants to get a picture of what regulations are doing for Americans and how they feel about them.

EPA Must Protect Public Health and Safety By Maintaining Existing Standards

By relying on Executive Order 13777, the EPA is telegraphing its intent to do one thing – relax existing regulations in favor of industry’s complaints about protections that benefit a broad spectrum of the public. If the EPA wanted to do an honest evaluation of existing regulations, the agency should be looking at those areas where the public remains at risk and where EPA regulations are vitally needed, or need to be improved. EPA should ask for guidance on how to better carry out its mission of protecting public health by building on existing standards rather than retreating from these essential safeguards.

These comments focus on just a few of EPA’s regulations that keep our water clean and safe. In particular, we highlight regulations that SELC has a particular interest in preserving because they have significant benefits in our region that outweigh associated costs.

The Clean Water Rule (40 C.F.R. § 230.3)

The Clean Water Rule, promulgated in 2015, but currently stayed due to ongoing litigation is integral to ensuring protections for our nation’s small streams and wetlands under the Clean Water Act. This rulemaking was the result of extensive stakeholder engagement and a lengthy comment period, and is buttressed by a wealth of scientific research. The agencies’ analysis indicated that the change in benefits of Clean Water Act programs because of the rule would exceed the costs. The analysis estimated benefits would range from \$338.9 to \$572.3 million per year, versus the estimated costs range of \$158.4 to \$465 million per year.¹³

Effluent Guidelines for steam electric power generating point source (40 CFR Part 423)

Steam electric power plants discharge a number of toxic pollutants, including arsenic, lead, mercury, selenium, chromium, and cadmium. Coal ash and these pollutants can persist in the environment for years. To address these issues, the Steam Electric ELG was finalized on November 3, 2015,¹⁴ but certain compliance deadlines are currently stayed.¹⁵

¹³ See U.S. EPA & U.S. Department of the Army, Economic Analysis of the EPA-Army Clean Water Rule (May 2015) available at https://www.epa.gov/sites/production/files/201505/documents/final_clean_water_rule_economic_analysis_5-15_2.pdf.

¹⁴ 80 Fed. Reg. 67837 (Nov. 3, 2015), available at <https://www.federalregister.gov/documents/2015/11/03/2015-25663/effluent-limitations-guidelines-and-standards-for-the-steam-electric-power-generating-point-source>.

¹⁵ See 82 Fed. Reg. 19005 (Apr. 25, 2017), available at <https://www.federalregister.gov/documents/2017/04/25/2017-07811/postponement-of-certain-compliance-dates-for-effluent-limitations-guidelines-and-standards-for-the>.

The steam electric ELG is the first update of the regulations for this industry since 1982. The 1982 rule is inadequate to address modern pollution and waste streams created by the newer technologies for generating electric power. The 2015 rule helped to address the changes in the industry.

The EPA forecasted that on an annual basis, the rule is projected to reduce the amount of toxic metals, nutrients, and other pollutants that steam electric power plants are allowed to discharge by 1.4 billion pounds and reduce water withdrawal by 57 billion gallons. Further, the agency estimates that the annual compliance costs for the final rule will be \$480 million, while the estimated benefits would be \$451 to \$566 million.¹⁶

There is no reason for the EPA to rethink the common-sense conclusion that our drinking water supplies and rivers need to be protected from dangerous coal ash pollution. These important standards keep toxic and cancer-causing pollutants out of our rivers, lakes, and drinking water reservoirs.

Chesapeake Bay Total Maximum Daily Load (40 C.F.R. § 130.7)

The Chesapeake Bay is a national treasure, home to a large number of plants, animals, and people. The nation's largest estuary system, the Bay has suffered from a host of pollution problems, including algae blooms, stormwater runoff, and air pollution, throughout its long history. In 2010, after years of inadequate resolution of the Bay's pollution issues, the Chesapeake Bay Total Maximum Daily Load (TMDL) was established to identify the necessary pollution reductions from major sources of nitrogen, phosphorus and sediment throughout the Bay. It also sets pollution limits for those constituents to help meet water quality standards.

According to the agency, full implementation of the Bay TMDL will eliminate 62 million pounds of nitrogen discharges, 4 million pounds of phosphorus discharges, and 1.6 billion points of sediment discharges.¹⁷ The Chesapeake Bay Foundation estimates that full implementation of the Bay TMDL will yield economic benefits of \$22.5 billion annually (increasing the benefits provided by the Bay ecosystem from \$107.2 billion to \$129.7 billion annually).¹⁸ EPA should look for ways to further advance these efforts.

Conclusion

As our history has demonstrated, ignoring the effects of pollution does not eliminate the burden of that pollution. To the contrary, neglecting water quality by repealing protections ensures more difficult and more costly efforts to undo damage in the future. We ask the EPA to avoid

¹⁶ See Steam Electric Power Generating Effluent Guidelines – 2015 Final Rule, *available at* <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>.

¹⁷ See https://www.epa.gov/sites/production/files/2014-12/documents/bay_tmdl_executive_summary_final_12.29.10_final_1.pdf.

¹⁸ See Chesapeake Bay Foundation, The Economic Benefits of Cleaning Up the Chesapeake (Oct. 2014), *available at* <http://www.cbef.org/document.doc?id=2271>.

repeating the mistakes of the past by maintaining and building on existing water quality protections and adequately staffing the Agency to assist state agencies and the public in carrying out those standards.

Sincerely,

A handwritten signature in dark ink, appearing to read "Geoffrey R. Gisler". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Geoffrey R. Gisler
Senior Attorney

A handwritten signature in dark ink, appearing to read "Navis Bermudez". The signature is cursive and somewhat stylized.

Navis Bermudez
Deputy Legislative Director

EXHIBIT 3

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

April 12, 2017

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Building, 61 Forsyth Street, S.W., 9th Floor (4PM/IF)
Atlanta, GA 30303-8960
(404) 562-9891

Re: FOIA Request: Executive Orders 13777

Dear Regional FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") respectfully requests all records in the possession of the U.S. Environmental Protection Agency ("EPA") that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order. This request is a resubmittal of our prior request sent on April 3, 2017 (Request Number EPA-HQ-2017-005657). This resubmittal supplements our prior request by providing additional information regarding how SELC intends to use the information obtained through this request to inform the general public. SELC does not, however, in any way admit or acknowledge any inadequacy in its prior submittal.

For the purposes of this request, the term "records" includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA. Please provide any electronic records in native file format. Please also include all responsive records generated up to the date this request is filled.

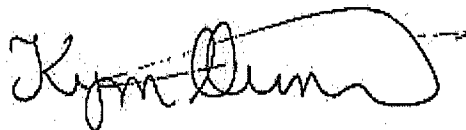
The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of EPA's activities in relation to EPA's execution and implementation of Executive Order 13777, which could have profound impacts on the work of EPA and its mission to protect human health and the environment, and is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about activities affecting human health and the environment in the Southeast. As part of its work, SELC has been actively engaged in protecting the environment of the Southeast for three decades. SELC intends to disseminate the information gathered through this request to the general public through its website, southernenvironment.org, which is updated regularly, press releases, social media, and public comment letters.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization which provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to glean a greater understanding of the Executive Order and to continue to disseminate information about federal environmental policy to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Please contact me at (919) 967-1450 or khunter@selcnc.org to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Kym Hunter", with a long horizontal flourish extending to the right.

Kym Hunter
Staff Attorney

EXHIBIT 4

Annemarie Wamsted

Subject: FW: Request to Clarify or Modify an Improper Request re: FOIA EPA-HQ-2017-005657

FilingDate: 4/25/2017 4:00:00 PM

From: Auther.Larry@epa.gov [mailto:Auther.Larry@epa.gov]

Sent: Thursday, April 20, 2017 2:44 PM

To: Kym Hunter

Subject: Request to Clarify or Modify an Improper Request re: FOIA EPA-HQ-2017-005657

04/20/2017 02:40 PM

FOIA Request: EPA-HQ-2017-005657

Ms. Hunter,

This is a follow up to our phone call discussion from 04/19/2017. The purpose of this communication is to assist you in clarifying your FOIA request so that EPA can process your request.

Concerning FOIA EPA-HQ-2017-005657 in which you requested,

“all records in possession of the U.S. Environmental Protection Agency that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order.”

I. Opportunity to Clarify or Modify Your Request

As submitted, your request is too broad to be completed within 20 days and does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. EPA’s FOIA regulations state:

“Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request.” 40 C.F.R. § 2.102(c).”

In addition, requests phrased as legal discovery, e.g., for all records “including but not limited to” and “pertaining to” a subject with no further limitation, do not provide adequate information to allow a professional employee to determine which records you wish EPA to provide. EPA cannot process your request because the subject matter is too broad, it is phrased as legal discovery, and you have not identified any record custodians. In order for EPA to process your request, we require additional details pertaining to the records you are seeking and the EPA employees who would be the custodians of these records.

We would like to provide you the opportunity to discuss the request with us and clarify the records that you are seeking so that EPA can process your request. As indicated in 40 C.F.R. § 2.102(c), please include, or be prepared to discuss, specific information about the records you seek, including time period, authors, or a more detailed description of the records’ subject matter.

II. Publicly Available Information

On 04/11/2017 the Agency made public information on the regulatory reform efforts related to Executive Order 13777. This included a Federal Register Notice, a press release, an informational website, and a docket for collecting public comments. Below are links to these public materials directly related to the subject matter of your request;

FR notice: <https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations>

Press release: <https://www.epa.gov/newsreleases/regulatory-reform-underway-epa>

Reg Reform central web site: <https://www.epa.gov/laws-regulations/regulatory-reform>

Reg Reform central docket: <https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190>

III. Next Steps

The processing clock is stopped for your FOIA request until we receive your clarification or modification. Please use the FOIA request number above as your reference number. Please respond within ten calendar days from the date of this letter to arrange a time to discuss your request, otherwise your request is considered voluntarily withdrawn. You may email rementer.nicole@epa.gov or contact Nicole Rementer (202) 564-3692 with your response. If we do not receive a response from you by **May 1, 2017** we will consider your request to be voluntarily withdrawn.

Further, you may email auther.larry@epa.gov or contact Larry Auther at (202) 564-2654, if you have questions.

IV. Further Guidance

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Larry Auther

Office of Policy, USEPA

EXHIBIT 5

Annemarie Wamsted

Subject: FW: Request to Clarify or Modify an Improper Request re: FOIA EPA-HQ-2017-005657

FilingDate: 4/25/2017 4:00:00 PM

From: Kym Hunter

Sent: Thursday, April 20, 2017 2:59 PM

To: 'Auther.Larry@epa.gov'

Cc: Annemarie Wamsted; Colin Shive

Subject: RE: Request to Clarify or Modify an Improper Request re: FOIA EPA-HQ-2017-005657

Thank you, Larry.

On the phone call yesterday you told me that you would be sending me a list of custodians. Please go ahead and send me that list and I will be able to identify whose records I would like to review.

I do not know the "file designations or descriptions for the records" so it is not possible for me to provide that information,

I can reconfirm the date range I told you on the phone yesterday which is from February 24 to the date I sent the request. A very short time period.

As noted on the phone, I do not need the documents that have been made publicly available on the website.

Thank you,
Kym Hunter

From: Auther.Larry@epa.gov [mailto:Auther.Larry@epa.gov]

Sent: Thursday, April 20, 2017 2:44 PM

To: Kym Hunter

Subject: Request to Clarify or Modify an Improper Request re: FOIA EPA-HQ-2017-005657

04/20/2017 02:40 PM

FOIA Request: EPA-HQ-2017-005657

Ms. Hunter,

This is a follow up to our phone call discussion from 04/19/2017. The purpose of this communication is to assist you in clarifying your FOIA request so that EPA can process your request.

Concerning FOIA EPA-HQ-2017-005657 in which you requested,

"all records in possession of the U.S. Environmental Protection Agency that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order."

I. Opportunity to Clarify or Modify Your Request

As submitted, your request is too broad to be completed within 20 days and does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. EPA's FOIA regulations state:

"Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c)."

In addition, requests phrased as legal discovery, e.g., for all records "including but not limited to" and "pertaining to" a subject with no further limitation, do not provide adequate information to allow a professional employee to determine which records you wish EPA to provide. EPA cannot process your request because the subject matter is too broad, it is phrased as legal discovery, and you have not identified any record custodians. In order for EPA to process your request, we require additional details pertaining to the records you are seeking and the EPA employees who would be the custodians of these records.

We would like to provide you the opportunity to discuss the request with us and clarify the records that you are seeking so that EPA can process your request. As indicated in 40 C.F.R. § 2.102(c), please include, or be prepared to discuss, specific information about the records you seek, including time period, authors, or a more detailed description of the records' subject matter.

II. Publicly Available Information

On 04/11/2017 the Agency made public information on the regulatory reform efforts related to Executive Order 13777. This included a Federal Register Notice, a press release, an informational website, and a docket for collecting public comments. Below are links to these public materials directly related to the subject matter of your request;

FR notice: <https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations>

Press release: <https://www.epa.gov/newsreleases/regulatory-reform-underway-epa>

Reg Reform central web site: <https://www.epa.gov/laws-regulations/regulatory-reform>

Reg Reform central docket: <https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190>

III. Next Steps

The processing clock is stopped for your FOIA request until we receive your clarification or modification. Please use the FOIA request number above as your reference number. Please respond within ten calendar days from the date of this letter to arrange a time to discuss your request, otherwise your request is considered voluntarily withdrawn. You may email rementer.nicole@epa.gov or contact Nicole Rementer (202) 564-3692 with your response. If we do not receive a response from you by **May 1, 2017** we will consider your request to be voluntarily withdrawn.

Further, you may email auther.larry@epa.gov or contact Larry Auther at (202) 564-2654, if you have questions.

IV. Further Guidance

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Larry Auther

Office of Policy, USEPA

EXHIBIT 6

Annemarie Wamsted

From: Kym Hunter
Sent: Tuesday, May 09, 2017 10:50 AM
To: 'auther.larry@epa.gov'; Rementer, Nicole (rementer.nicole@epa.gov)
Cc: Leslie Griffith; Annemarie Wamsted
Subject: RE: Request to Clarify or Modify an Improper Request EPA-HQ-2017-006074

FilingDate: 5/24/2017 3:33:00 PM

Mr. Auther and Ms. Rementer,

We didn't have a phone call yesterday, so I am not sure to what you are referring.

I did, however, previously send you the clarification below on April 20th.

Thank you, Larry.

On the phone call yesterday you told me that you would be sending me a list of custodians. Please go ahead and send me that list and I will be able to identify whose records I would like to review.

I do not know the "file designations or descriptions for the records" so it is not possible for me to provide that information,

I can reconfirm the date range I told you on the phone yesterday which is from February 24 to the date I sent the request. A very short time period.

As noted on the phone, I do not need the documents that have been made publicly available on the website.

Thank you,
Kym Hunter

From: auther.larry@epa.gov [mailto:auther.larry@epa.gov]
Sent: Tuesday, May 09, 2017 10:24 AM
To: Kym Hunter
Subject: Request to Clarify or Modify an Improper Request EPA-HQ-2017-006074

05/09/2017 10:21 AM
FOIA Request: EPA-HQ-2017-006074

Ms. Hunter,

This is a follow up to our phone call discussion yesterday. The purpose of this communication is to assist you in clarifying your FOIA request so that EPA can process your request.

Concerning FOIA EPA-HQ-2017-005657 in which you requested,

“all records in possession of the U.S. Environmental Protection Agency that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order.”

I. Opportunity to Clarify or Modify Your Request

As submitted, your request is too broad to be completed within 20 days and does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. EPA’s FOIA regulations state:

“Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request.” 40 C.F.R. § 2.102(c).”

In addition, requests phrased as legal discovery, e.g., for all records “including but not limited to” and “pertaining to” a subject with no further limitation, do not provide adequate information to allow a professional employee to determine which records you wish EPA to provide. EPA cannot process your request because the subject matter is too broad, it is phrased as legal discovery, and you have not identified any record custodians. In order for EPA to process your request, we require additional details pertaining to the records you are seeking and the EPA employees who would be the custodians of these records.

We would like to provide you the opportunity to discuss the request with us and clarify the records that you are seeking so that EPA can process your request. As indicated in 40 C.F.R. § 2.102(c), please include, or be prepared to discuss, specific information about the records you seek, including time period, authors, or a more detailed description of the records’ subject matter.

II. Fee Waiver Request

You requested a waiver of all processing fees with your FOIA request submission. As of the date of this letter, a decision by EPA’s National FOIA Office on your fee waiver request is still pending.

III. Publicly Available Information

On 04/11/2017 the Agency made public information on the regulatory reform efforts related to Executive Order 13777. This included a Federal Register Notice, a press release, an informational website, and a docket for collecting public comments. Below are links to these public materials directly related to the subject matter of your request.

FR notice: <https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations>

Press release: <https://www.epa.gov/newsreleases/regulatory-reform-underway-epa>

Reg Reform central web site: <https://www.epa.gov/laws-regulations/regulatory-reform>

Reg Reform central docket: <https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190>

IV. Next Steps

The processing clock is stopped for your FOIA request until we receive your clarification or modification. Please use the FOIA request number above as your reference number. Please respond within ten calendar days from the date of this letter to arrange a time to discuss your request, otherwise your request is considered voluntarily withdrawn. You may email rementer.nicole@epa.gov or contact Nicole Rementer (202) 564-3692 with your response. If we do not receive a response from you by **May 1, 2017** we will consider your request to be voluntarily withdrawn.

Further, you may email auther.larry@epa.gov or contact Larry Auther at (202) 564-2654, if you have questions.

V. Further Guidance

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Larry Auther

Office of Policy, USEPA

EXHIBIT 7

Annemarie Wamsted

Subject: FW: FOIA Request: EPA-HQ-2017-006074 - Phone Call re: Clarification of Request

FilingDate: 6/5/2017 7:12:00 PM

From: Rementer, Nicole [<mailto:rementer.nicole@epa.gov>]

Sent: Wednesday, May 24, 2017 4:24 PM

To: Kym Hunter

Cc: Auther, Larry

Subject: FOIA Request: EPA-HQ-2017-006074 - Phone Call re: Clarification of Request

Good afternoon, Ms. Hunter:

Thank you for taking the time to discuss your FOIA request related to Executive Order 13,777, "Enforcing the Regulatory Reform Agenda." Please let this email serve as memorialization of our conversation and understanding of the next steps in the processing of your FOIA request.

First, EPA needed clarification of your request, as discussed in the May 9, 2017 email from Larry Auther. Specifically, EPA sought clarification on the date range, record types, and custodians/program offices you desire to be searched to locate potentially responsive records. In your May 9, 2017 email response, you confirmed the date range of February 24, 2017 to the date of the request, and stated that you did not have sufficient information about "file designations or descriptions for the records" to provide record types, nor sufficient information to provide a list of custodians.

On our call we discussed the parameters of the search and came to an initial agreement on the following search parameters:

Records Systems: Outlook/Electronic Records and EPA's Correspondence Management System

(<https://www.epa.gov/privacy/privacy-act-system-records-correspondence-management-system-epa-22>)

Custodians: Administrator Scott Pruitt and the Regulatory Reform Task Force Members—Samantha Dravis, Ryan Jackson, Brittany Bolen, and Byron Brown.

Search Terms: "13777" OR "regulatory reform" OR "task force"

Date range: 2/24/17 to 4/15/17

Now that your request is clarified, EPA will start the clock in FOIAonline on your request. If you have any questions or concerns, please feel free to contact Mr. Auther or me.

Sincerely,

Nicole M. Rementer

Attorney-Adviser | FOIA Expert Assistance Team (FEAT)

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW (MC 2310A)

Washington, DC 20460

Direct 202.564.3692 | Fax 202.564.5442

rementer.nicole@epa.gov

EXHIBIT 8

Annemarie Wamsted

Subject: FW: Unusual Circumstances Time Extension, FOIA EPA-HQ-2017-006074

FilingDate: 6/5/2017 7:48:00 PM

----- Original message -----

From: auther.larry@epa.gov

Date: 5/30/17 8:48 AM (GMT-05:00)

To: Kym Hunter <khunter@selcnc.org>

Subject: Unusual Circumstances Time Extension, FOIA EPA-HQ-2017-006074

05/30/2017 08:45 AM

FOIA Request: EPA-HQ-2017-006074

Dear Ms. Hunter:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA or Agency) on April 12, 2017, in which you requested;

“all records in possession of the U.S. Environmental Protection Agency that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order.”.

You requested a waiver of all processing fees with your FOIA request submission. Your fee waiver has been approved and you will not be charged any fees for your request.

On April 19, 2017, you discussed the public information available related to your request with Larry Auther. And on May 24, 2017, you spoke with Nicole Rementer to narrow your request.

Given the scope of the request, EPA anticipates that the response will require significant amount of EPA's resources and time to search for and collect the requested records from multiple EPA offices that are separate from the office processing the request and the need for consultation with another agency having a substantial interest in the determination of the request.

Pursuant to 40 C.F.R. § 2.104(d), and extension of time required to respond to your request is necessary. The new due date is July 7, 2017, ten working days from June 22, 2017. For an update on the status of your FOIA request, please access FOIAonline.

If you would like to modify or narrow your request so that it may be processed sooner, please contact Nicole Rementer, who can be reached at 202-564-3692 or rementer.nicole@epa.gov.

Larry Auther

Office of Policy, USEPA

EXHIBIT 9

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

July 11, 2017

FREEDOM OF INFORMATION APPEAL

VIA E-mail and U.S. Mail

Headquarters Freedom of Information Staff
Records, Privacy and FOIA Branch
Office of Information Collection
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue (2822T), NW
Washington, DC 20460
hq.foia@epa.gov

Re: April 12, 2017, FOIA Request EPA-HQ-2017-006074, Documents Relating to Executive Order 13777

Dear FOIA Officer:

Please accept this timely filed appeal under 5 U.S.C. § 552(a)(6) and 40 C.F.R. § 2.104. On April 12, 2017, the Southern Environmental Law Center ("SELC") submitted FOIA request EPA-HQ-2017-006074. EPA's July 7, 2017, extended deadline for responding to this request has passed, and EPA has not responded. If we do not receive a response to this appeal within 20 working days we will seek judicial review of EPA's failure to respond in a timely manner.

In its request, SELC sought any and all records in the possession of EPA relating to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this order. A copy of this FOIA request is attached as Exhibit 1. This request was a revision and resubmittal of FOIA request EPA-HQ-2017-005657, with additional information to support SELC's request for a fee waiver.

SELC attorney Kym Hunter spoke with Larry Auther of the Office of Policy by telephone regarding this request on April 19, 2017. Mr. Auther advised Ms. Hunter that all information responsive to this request was either available online or covered by FOIA Exemption 5. The next day, Mr. Auther wrote SELC by email and stated that, "EPA cannot process your request because the subject matter is too broad, it is phrased as legal discovery, and you have not identified any record custodians." Email from Larry Auther, EPA, to Kym Hunter, SELC (April 20, 2017). This email asked SELC to clarify or modify the request and stated that EPA would consider the request withdrawn if they received no response by May 1, 2017. *Id.*

SELC immediately responded and repeatedly discussed this request via email and telephone conversations with EPA. In April 20 and May 9 emails to EPA, SELC clarified that

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the time frame for the request was February 24, 2017, to the date of the request, April 12, 2017. Email from Kym Hunter to Larry Auther (April 20, 2017); Email from Kym Hunter to Nicole Rementer, EPA (May 9, 2017). Ms. Hunter discussed the request by phone with Nicole Rementer on May 24, and without conceding the original request was too broad agreed on the records systems, custodians, search terms, and date range EPA would initially use to fulfill the request. In a May 24, 2017, email documenting that phone conversation, Ms. Rementer informed SELC that EPA would “start the clock” on the request. Exhibit 2, Email from Nicole Rementer to Kym Hunter (May 24, 2017).

On May 30, 2017, EPA extended its deadline for responding until July 7, 2017. Email from Larry Auther to Kym Hunter (May 30, 2017). To date EPA has not made any determination regarding this request or provided any responsive documents.

I. Grounds for Appeal

The Freedom of Information Act, 5 U.S.C. § 552, requires federal agencies to “promptly” make records available upon request. 5 U.S.C. § 552(a)(3)(A). Specifically, agencies must make a determination on requests within 20 working days of receiving the request, and they must immediately notify the requester of that determination. *Id.* § 552(a)(6)(A). Agencies may extend their deadline for responding by up to 10 working days if unusual circumstances apply and they provide timely notice to the requester. *Id.* § 552(a)(6)(B).

Pursuant to the “unusual circumstances” exception EPA invoked, and EPA’s correspondence with SELC, EPA was required to respond with a determination by July 7. EPA has not done so. This failure to timely respond is a violation of the Freedom of Information Act. SELC appeals EPA’s inaction, and respectfully demands fulfillment of the request or another final determination within 20 working days. SELC further notes that per EPA regulations it is entitled to seek judicial review without making an administrative appeal. 40 C.F.R. § 2.104(l).

II. Conclusion

We expect a reply to this appeal within 20 working days as required by FOIA. *See* 5 U.S.C. § 552(a)(6). If this appeal is not resolved in a timely manner, we will be forced to explore all available legal options for compelling EPA’s compliance with FOIA, including filing suit in federal court. Should you have any questions, please feel free to contact us at (919) 967-1450. We would be happy to discuss the original request and this appeal with you.

Sincerely,



Kym Hunter
Staff Attorney



Leslie Griffith
Associate Attorney

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

April 12, 2017

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Building, 61 Forsyth Street, S.W., 9th Floor (4PM/IF)
Atlanta, GA 30303-8960
(404) 562-9891

Re: FOIA Request: Executive Orders 13777

Dear Regional FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") respectfully requests all records in the possession of the U.S. Environmental Protection Agency ("EPA") that in any way relate to Executive Order 13777, Enforcing the Regulatory Reform Agenda, and the execution or implementation of this Executive Order. This request is a resubmittal of our prior request sent on April 3, 2017 (Request Number EPA-HQ-2017-005657). This resubmittal supplements our prior request by providing additional information regarding how SELC intends to use the information obtained through this request to inform the general public. SELC does not, however, in any way admit or acknowledge any inadequacy in its prior submittal.

For the purposes of this request, the term "records" includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA. Please provide any electronic records in native file format. Please also include all responsive records generated up to the date this request is filled.

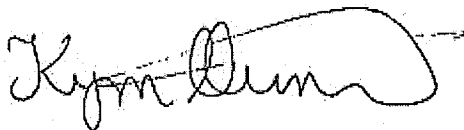
The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of EPA's activities in relation to EPA's execution and implementation of Executive Order 13777, which could have profound impacts on the work of EPA and its mission to protect human health and the environment, and is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about activities affecting human health and the environment in the Southeast. As part of its work, SELC has been actively engaged in protecting the environment of the Southeast for three decades. SELC intends to disseminate the information gathered through this request to the general public through its website, southernenvironment.org, which is updated regularly, press releases, social media, and public comment letters.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver is appropriate because SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization which provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to glean a greater understanding of the Executive Order and to continue to disseminate information about federal environmental policy to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Please contact me at (919) 967-1450 or khunter@selcnc.org to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Kym Hunter", with a long horizontal flourish extending to the right.

Kym Hunter
Staff Attorney

Annemarie Wamsted

Subject: FW: FOIA Request: EPA-HQ-2017-006074 - Phone Call re: Clarification of Request

From: Rementer, Nicole [<mailto:rementer.nicole@epa.gov>]
Sent: Wednesday, May 24, 2017 4:24 PM
To: Kym Hunter
Cc: Auther, Larry
Subject: FOIA Request: EPA-HQ-2017-006074 - Phone Call re: Clarification of Request

Good afternoon, Ms. Hunter:

Thank you for taking the time to discuss your FOIA request related to Executive Order 13,777, "Enforcing the Regulatory Reform Agenda." Please let this email serve as memorialization of our conversation and understanding of the next steps in the processing of your FOIA request.

First, EPA needed clarification of your request, as discussed in the May 9, 2017 email from Larry Auther. Specifically, EPA sought clarification on the date range, record types, and custodians/program offices you desire to be searched to locate potentially responsive records. In your May 9, 2017 email response, you confirmed the date range of February 24, 2017 to the date of the request, and stated that you did not have sufficient information about "file designations or descriptions for the records" to provide record types, nor sufficient information to provide a list of custodians.

On our call we discussed the parameters of the search and came to an initial agreement on the following search parameters:

Records Systems: Outlook/Electronic Records and EPA's Correspondence Management System
(<https://www.epa.gov/privacy/privacy-act-system-records-correspondence-management-system-epa-22>)
Custodians: Administrator Scott Pruitt and the Regulatory Reform Task Force Members—Samantha Dravis, Ryan Jackson, Brittany Bolen, and Byron Brown.
Search Terms: "13777" OR "regulatory reform" OR "task force"
Date range: 2/24/17 to 4/15/17

Now that your request is clarified, EPA will start the clock in FOIAonline on your request. If you have any questions or concerns, please feel free to contact Mr. Auther or me.

Sincerely,

Nicole M. Rementer

Attorney-Adviser | FOIA Expert Assistance Team (FEAT)
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2310A)
Washington, DC 20460
Direct 202.564.3692 | Fax 202.564.5442
rementer.nicole@epa.gov